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JAMES R. BROWNING, C

(239) **Nos. 2, 3 and 4, Original**

IN THE

Supreme Court of the United States

October Term, 1958

STATES OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA,
Complainants,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,

STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI, and ARKANSAS,
Intervening Defendants.

STATE OF MICHIGAN,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO.

STATE OF NEW YORK,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO.

ON AMENDED APPLICATION OF THE STATES OF WISCONSIN, MINNESOTA, OHIO, PENNSYLVANIA, MICHIGAN AND NEW YORK FOR A REOPENING AND AMENDMENT OF THE DECREE OF APRIL 21, 1930, AND THE GRANTING OF FURTHER RELIEF

Supplemental exceptions by the State of New York to the memorandum filed on April 14, 1959 by Honorable J. Lee Rankin, Solicitor General, for the United States, as amicus curiae, on the amended application of the above complainants.

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IN THE

Supreme Court of the United States

October Term, 1958

No. 2, Original

STATES OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA,
Complainants,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,

STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI, and ARKANSAS,
Intervening Defendants.

No. 3, Original

STATE OF MICHIGAN,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO.

No. 4, Original

STATE OF NEW YORK,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO.

ON AMENDED APPLICATION OF THE STATES OF WISCONSIN, MINNESOTA, OHIO, PENNSYLVANIA, MICHIGAN AND NEW YORK FOR A REOPENING AND AMENDMENT OF THE DECREE OF APRIL 21, 1930, AND THE GRANTING OF FURTHER RELIEF

Supplemental exceptions by the State of New York to the memorandum filed on April 14, 1959 by Honorable J. Lee Rankin, Solicitor General, for the United States, as amicus curiae, on the amended application of the above complainants.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of New York joins in the exceptions and objections of the States of Wisconsin, Minnesota, Ohio, Pennsylvania and Michigan to the memorandum filed on April 14, 1959, by Honorable J. Lee Rankin, Solicitor General, for the United States, as *amicus curiae*, on the amended application of the above complainants. The State of New York also respectfully submits the following supplemental exceptions to bring to the Court's attention the State's position concerning points raised by the Solicitor General's memorandum, with particular reference to the New York State Power Authority.

Exception No. 1

The State of New York disagrees with the conclusion expressed in the Solicitor General's memorandum at pages 19 and 20 that

> "Unless the State of New York or its Power Authority has a Federal permit to use for power purposes the water which is now being diverted at Chicago, the diversion of that water invades no right of New York and so provides no ground for relief to that State."

The State of New York contends that it is entitled to the historic and natural flow of the waters of the Great Lakes and that its previous assertion of such rights was not denied by this Court but rather its right to raise the question was re-affirmed by the following language of this Court:

> "This ruling will be without prejudice, so that the plaintiff State, if later on in a position to do so, may be free to litigate the questions which the paragraph is intended to present." *New York* v. *Illinois*, 274 U. S. 488, 490.

Exception No. 2

The State of New York excepts to the conclusion in the Solicitor General's memorandum on pages 20-21 which suggests by implication that the Act of August 21, 1957, 71 Stat. 401, sanctioned the diversion at Chicago and precluded the State of New York from asserting its right to the historic and natural flow of the Great Lakes system. It is the position of the State of New York that the Act authorized the licensing by the Federal Power Commission of the Power Authority of the State of New York to use all of the United States' share of the waters, rather than the residuum after whatever amounts might be diverted at Chicago.

Exception No. 3

The State of New York excepts to the conclusion reached by the Solicitor General's memorandum on pages 21-23 that the order of the International Joint Commission, dated August 6, 1956 (35 St. Dept. Bul., 227-229) supplementing its order of approval for the construction and operation of power works jointly by entities of the United States and Canada, sanctioned a diversion of 3100 cubic feet per second at Chicago and that the amendment binds the State of New York to use only such water as remains after the Chicago diversion. It is the position of New York State that the International Joint Commission simply recognized the fact and did not otherwise deal with the diversion at Chicago, and that the State of New York is entitled to assert its right to the historic and natural flow of the Great Lakes.

Dated: April 30, 1959.

Respectfully submitted,

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